



April 29, 1999

Mr. Blake Hansen
McHahon, Tidwell, Hansen, Atkins & Peacock, P.C.
4001 East 42nd
Odessa, Texas 79762

OR99-1180

Dear Ms. Harris:

You ask this office to partially reconsider Open Records Letter 99-0802 (1999). Your request was assigned ID# 125122.

The Ector Independent School District (the "district") received a request for "a copy of [the requestor's] personnel/employee file . . . all pay time sheets and payroll records." Open Records Letter 99-0802 (1999) ruled that the information at issue could not be withheld under section 552.103(a) of the Government Code, the "litigation exception." Also, based on the district's representation that "any personally identifiable" education record information in the submitted records had been redacted, the decision found that the information at issue "no longer contains information" which must be withheld under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or sections 552.026 and 552.114 of the Government Code. In your request for reconsideration, you contend that other information than the identifying information already redacted by the district before submitting the records in question was in fact "personally identifiable" and must also be withheld under FERPA.

Section 552.114(a) of the Government Code requires withholding

information in a student record at an educational institution funded wholly or partly by state revenue.

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other


than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A).

As you note, "personally identifiable information" is defined for purposes of FERPA in Title 34 CFR section 99.3 as including but not limited to: a) the student's name, b) the name's of parents or other family members, c) the address of the student or his family, d) a personal identifier such as the student number or social security number, e) a list of personal characteristics which would make the student easily identifiable, or f) other information that would make the student's identity easily traceable.

Although in your initial request you represented that "personally identifiable information contained in the items forwarded to your office has been deleted in accordance with the provisions of FERPA," we understand you now to contend that the records in question contain information about the interaction of students with the requestor which could easily identify the students to the requestor which must also be withheld under FERPA. We agree that to the extent the records in question contain information which would identify a student, they must be withheld. We have marked the portions of the information which in our opinion, must be withheld under FERPA as "personally identifiable information."¹ Open Records Letter 99-0802 is overruled to the extent of its inconsistency with this decision.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

¹We note that Open Records Decision No. 634 (1995) ruled that to the extent education records contained personally identifiable student information subject to FERPA, they could be withheld without the need of seeking an attorney general decision under section 552.301 of the Government Code.

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WMW/eaf

Ref.: ID# 125182

encl: Marked documents

cc: Mr. Harvey Enriquez
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Midland, Texas 79703